

STATE OF MICHIGAN
COURT OF APPEALS

In re K. C. MILLER, Minor.

UNPUBLISHED

October 13, 2015

No. 326406

Livingston Circuit Court

Family Division

LC No. 13-014497-NA

Before: BOONSTRA, P.J., and SAAD and HOEKSTRA, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating her parental rights to the minor child, KM, pursuant to MCL 712A.19b(3)(c)(i) (failure to rectify conditions leading to adjudication), MCL 712A.19b(3)(g) (failure to provide proper care and custody), and MCL 712A.19b(3)(j) (reasonable likelihood of harm). Because the trial court did not clearly err by determining that statutory grounds for termination had been met and that termination was in the child's best interests, we affirm.

On June 26, 2013, following a preliminary hearing, the trial court found probable cause to authorize a petition which alleged that respondent had (1) a history of mental illness involving bipolar disorder and anxiety, (2) a criminal record, including controlled substance offenses, and (3) a lack of stable housing, including periods of homelessness. Petitioner also alleged that, following interactions with respondent, 14-year-old KM had threatened suicide, engaged in self-harm, and run away from home on multiple occasions. According to the allegations in the petition, respondent allowed KM to be truant from school, she had failed to obtain appropriate mental health treatment for KM, and there were concerns that KM was coached to make allegations of sexual abuse against KM's father.

Respondent exercised her right to a jury trial for the adjudicative phase of the proceedings, and the jury found that the statutory grounds for jurisdiction alleged in the petition were proven by a preponderance of the evidence. Specifically, the jury found that respondent "when able to do so, neglected or refused to provide proper or necessary support, educational, medical, surgical or other care necessary for [KM's] health or morals." The jury found that KM "was subject to a substantial risk of harm to her mental well-being" and that her home was "an unfit place for her to live by reason of neglect, cruelty, drunkenness, criminality or depravity" on the part of respondent.

At the initial dispositional hearing, at which respondent failed to appear, the trial court ordered respondent to comply with a service plan that called for respondent to address issues

involving mental health, substance abuse, housing, income, parenting, and communication with KM. For example, respondent was expected to participate in psychological evaluations, substance abuse assessments, random drug and alcohol screenings, attend therapy, maintain appropriate housing, and maintain legal and adequate income. It should also be noted that, aside from the instant termination proceedings, respondent and KM's father had been involved in a custody dispute in Genesee County and, in the course of that case, KM's father ultimately received sole legal and physical custody of KM, and respondent's parenting time was suspended.

In October of 2014, a little over ten months after the adjudication trial in this case, petitioner filed a petition seeking termination of respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). The trial court determined that clear and convincing evidence had been presented to warrant termination of respondent's parental rights under each of these subsections. The trial court emphasized that respondent had largely failed to comply with her service plan and had not made progress addressing the issues that caused the child to be removed from her care. For instance, respondent had not obtained stable housing, her drug screenings were repeatedly positive for marijuana, she never received a psychiatric evaluation, and she consistently failed to attend appointments. Those working with respondent indicated that she failed to benefit from treatment and that she refused to accept responsibility for her circumstances. The trial court also noted that respondent violated the court order suspending her parenting time when she kidnapped KM from a concert, transported her across state lines to Indiana, allowed her access to marijuana, failed to bring KM's prescription medication for her, and then left her alone in a public park when KM grew sick from a combination of marijuana and respondent's medications. Given these circumstances, the trial court concluded that clear and convincing evidence existed to warrant termination of respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). Although the trial court recognized KM's bond to respondent, the trial court also concluded that termination was in KM's best interests because respondent was a destructive influence in KM's life, KM was in need of a safe and stable home, and KM did not recognize the danger respondent posed to her. Respondent now appeals as of right the order terminating her parental rights.

On appeal, respondent first argues that the trial court clearly erred by finding that there was clear and convincing evidence to terminate her parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). In particular, respondent contends that she did comply with her service plan by, for example, attending some therapy sessions, and that she should be given further opportunities for improvement before her rights are terminated. We find these arguments to be without merit.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b has been met by clear and convincing evidence. *In re Fried*, 266 Mich App 535, 540-541; 702 NW2d 192 (2005). This Court reviews for clear error a trial court's finding of whether a statutory ground for termination has been proven by clear and convincing evidence. MCR 3.977(K); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

In this case, the trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

After reviewing the record in this case, we conclude that the trial court did not clearly err by finding clear and convincing evidence to support the termination of respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). Regarding MCL 712A.19b(3)(c)(i), the conditions leading to adjudication included respondent's mental instability, unstable housing, and inability to address KM's educational and mental health needs. In January 2014, respondent was ordered to participate in various services, including obtaining a psychiatric evaluation and a substance abuse assessment, and to submit to random drug screens. The record shows that she did not complete a psychiatric or a substance abuse evaluation. It also shows that she missed numerous drug screens and that she tested positive for marijuana multiple times. Respondent asserted that she had made up the missed screens, but the trial court found this claim to be unbelievable and we defer to the trial court's opportunity to assess credibility. Respondent also continued to struggle with housing. At the time of trial, respondent was incarcerated on parental kidnapping charges and was reliant on a relative to pay for the housing she had obtained after a period of homelessness. In addition, respondent continued to undermine KM's educational efforts by, for example, taking her to Indiana in violation of a court order, which resulted in KM failing summer school classes.

Further, although respondent was in need of mental health counseling, respondent's counselor, psychologist Joy Shaw, testified that respondent was no longer receiving therapy. Shaw explained that respondent's attendance had been sporadic and that respondent had not been very honest with her. According to Shaw, respondent made absolutely no progress in addressing the reasons for KM's removal and respondent was not stable enough to parent a teenager. Shaw opined that respondent had not benefited from her therapy and that she had no insight into her personality disorder. Shaw explained that respondent provided excuses for everything and did not believe she needed to make any changes in her life. Significantly, Shaw testified that respondent indicated that court orders did not matter because respondent was going to do what she wanted. In contrast, respondent asserts on appeal that she did attend some therapy sessions and that she did make some efforts to comply with her service plan. Regardless of the minimal efforts respondent claims to have made, the fact remains that she cannot be considered compliant with her service plan when it is readily apparent that she received no benefit from the services offered. See *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). Accordingly, given respondent's lack of meaningful and consistent progress, it is clear that as of termination "[t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age."

The court also found that termination was proper pursuant to MCL 712A.19b(3)(g). As discussed above, the record shows that respondent failed to meaningfully comply with the case service plan, and a parent's failure to participate in and benefit from a service plan is evidence that a parent will not be able to provide a child with proper care and custody within a reasonable time. See *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). Moreover, in addition to the facts outlined above, the record shows that respondent failed to appear for scheduled court hearings, had her supervised parenting time taken away after she failed to follow the program rules, and had contacted KM even though she had been ordered not to. The evidence shows that this contact with respondent has been detrimental to KM's mental health. KM experienced panic attacks because of the inappropriate phone contact. This was corroborated by the testimony of KM's father, who recalled KM calling him from school because she was having an anxiety attack as a result of respondent contacting her by phone. Respondent's decision to take KM to Indiana in violation of a court order, her failure to provide KM with her prescription medication, her decision to allow KM access to marijuana, and her abandonment of KM in a public park when KM became ill also underscore respondent's inability to provide proper care and custody. Respondent's behavior, particular when coupled with her failure to benefit from her service plan, amply supports the trial court's conclusion to terminate respondent's rights pursuant to MCL 712A.19b(3)(g). Cf. *In re White*, 303 Mich App at 713.

Likewise, the evidence detailed above supports the trial court's decision that termination was proper pursuant to MCL 712A.19b(3)(j). Respondent placed KM in harm during the Indiana incident, and she has wholly failed to benefit from her service plan. Failure to benefit from a service plan is evidence that a child may be at risk—physically or mentally—if returned to a parent. See *In re Trejo*, 462 Mich 341, 346 n 3; 612 NW2d 407 (2000). Indeed, the record in this case clearly shows that KM's contact with respondent was detrimental to KM's mental health and well-being. After her supervised visitation with respondent in August 2013, KM was hospitalized for psychiatric care even though she had been mentally stable prior to the visit. Moreover, during the visit, she was observed in respondent's lap, whispering, whimpering, and behaving like a toddler. In addition, respondent contacted KM by phone and Facebook. Some

of the phone contact resulted in KM cutting class or leaving school. The contact with respondent caused KM anxiety. Her father testified that she would wake in the night sobbing and that she said respondent was ruining her life. Respondent's testimony made clear that she would not change anything with her parenting, besides making KM go to school more often. Given these facts, the trial court did not clearly err in finding that termination was proper pursuant to MCL 712A.19b(3)(j).

Finally, respondent also argues on appeal that the trial court clearly erred by finding that termination of her parental rights was in KM's best interests. Respondent acknowledges that she has "limitations as a parent," but asserts that her efforts to improve were discounted and termination without additional time for respondent to improve is not in KM's best interests.

We review the court's best-interest decision for clear error. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). "[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *In re Moss Minors*, 301 Mich App 76, 90; 836 NW2d 182 (2013). In deciding whether termination is in the child's best interests, the court should consider all the evidence and weigh a wide variety of factors, which may include, for example, the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, the child's safety and well-being, and the parent's compliance with his or her case service plan. *In re White*, 303 Mich App at 714; *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012); *In re VanDalen*, 293 Mich App 120, 142; 809 NW2d 412 (2011). The trial court may also consider an unfavorable psychological evaluation and a parent's history. See *In re Jones*, 286 Mich App at 131.

Here, although respondent and KM were bonded, the testimony clearly established that their relationship was not healthy. Respondent, in violation of court orders, would repeatedly call KM while she was in school. Her calls caused KM anxiety that sometimes resulted in her leaving school early. She also had to cut class in order to speak with respondent. Additionally, while KM was in summer school, respondent picked her up at a concert and transported her to Indiana. KM failed all but one of her summer school classes as a result. As discussed above, during the trip to Indiana, respondent provided KM with respondent's prescription medications and with access to marijuana. Then, when KM had an adverse reaction, she dropped KM off in a park and had her call 911. The record also reflects that respondent was unable to follow the rules for supervised parenting time. After she was instructed to follow the rules during parenting-time visit, respondent became belligerent and disruptive to the point where 911 was called. After the visit, although KM had been stable before, she ended up being hospitalized for psychiatric care.

Moreover, the record shows that KM's behavior and relationship with her father has improved since she was returned to his sole care. Although her self-harming behavior initially increased, the testimony shows that by the time of termination she had not cut herself in six months. Further, her school attendance and grades had improved. The testimony established that she was in a safe and stable home. Given the destructive nature of respondent's relationship with KM, on these facts, the trial court did not clearly err by finding by a preponderance of the evidence that termination of respondent's parental rights was in KM's best interests.

Affirmed.

/s/ Mark T. Boonstra
/s/ Henry William Saad
/s/ Joel P. Hoekstra